

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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YEVESEY SHMERKOVICH,
Individually and on behalf of a class,

Plaintiff,

-against-

RMC CONSULTING GROUP LLC,

Defendant.

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**ORDER ADOPTING REPORT
AND RECOMMENDATIONS**

09-CV-5490 (KAM)(MDG)

MATSUMOTO, United States District Judge:

Plaintiff Yevesey Shmerkovich ("plaintiff"), individually on behalf of a class, brought this action against RMC Consulting Group LLC ("defendant"), pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, seeking to recover damages for allegedly unlawful credit and collection practices engaged in by defendant. (*See generally* ECF No. 1, Complaint ("Compl.").) Presently before the court is a Report and Recommendation ("R&R") issued by Magistrate Judge Go on January 31, 2011, recommending this court deny plaintiff's motion for a default judgment and grant defendant's request to vacate entry of default. (ECF No. 17, R&R, at 9.)

Notice of the Report and Recommendation was sent electronically to the parties appearing in the docket via the court's electronic filing system on January 31, 2011. As explicitly noted at the end of the Report and Recommendation, any objections to the Report and Recommendation were to be filed on

or before February 17, 2011. (ECF No. 17, R&R, at 9.) The statutory period for filing objections has expired, and no objections to Magistrate Judge Go's Report and Recommendation have been filed.

In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where no objection to the Report and Recommendation has been filed, the district court "need only satisfy itself that that there is no clear error on the face of the record." *Urena v. State of New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Upon a review of the Report and Recommendation, and considering that the parties have failed to object to any of Magistrate Judge Go's thorough and well-reasoned recommendations, the court finds no clear error in Magistrate Judge Go's Report and Recommendation and hereby affirms and adopts the Report and Recommendation as the opinion of the court. The court orders as follows: (1) Plaintiff's motion for entry of a default judgment is denied; (2) Defendant's request to vacate the notation of default is granted; (3) Plaintiff shall respond within three business days of the date of this order to defendant's request to file a motion to dismiss; (4) Defendant's time to answer is

extended to a date to be determined at a conference with the court if defendant decides not to proceed with its motion to dismiss; and (5) Plaintiff's motion for attorney's fees, (ECF No. 9, Plaintiff's Motion for an Award of Costs, Attorneys Fees and Damages, dated June 27, 2010), is denied as premature. See 15 U.S.C. § 1692k(a)(3) (providing that a debtor who fails to comply with the Fair Debt Collection Practices Act is liable for "reasonable attorney's fee as determined by the court").

The parties are directed to appear for a telephonic pre-motion conference on April 13, 2011 at 11:00 a.m. to discuss defendant's proposed motion to dismiss.

SO ORDERED.

Dated: March 14, 2011
Brooklyn, New York

_____/s/_____
Kiyo A. Matsumoto
United States District Judge